



April 3, 2015

ENGROSSED HOUSE BILL No. 1508

DIGEST OF HB 1508 (Updated April 1, 2015 5:32 pm - DI 87)

Citations Affected: IC 36-7.

Synopsis: Performance bonds of land developers. Prohibits a unit of local government from adopting or enforcing an ordinance, rule, or other policy requiring a land developer of Class 1 or Class 2 structures to do the following: (1) With certain exceptions, obtain a performance bond or other surety before an approved secondary subdivision plat is recorded. (2) Obtain a maintenance bond that has an effective period of greater than three years. Authorizes a unit of local government to require the land developer, as a condition precedent to recording the secondary plat, to obtain a performance bond or other surety for incomplete or unfinished streets, sanitary piping, storm water piping systems, water mains, sidewalks and ornamental landscaping in common areas, and erosion control. Provides, that an ordinance, rule, or policy requiring a land developer to obtain a performance bond or other surety must include a provision for: (1) the release of the bond or other surety upon completion to the satisfaction of the local unit of the subject matter upon which the bond or other surety was obtained; and (2) the partial release of the bond or other surety on an annual basis in accordance with a partial release schedule.

Effective: July 1, 2015.

VanNatter, Morris

(SENATE SPONSORS — HOLDMAN, MESSMER)

January 20, 2015, read first time and referred to Committee on Government and Regulatory Reform.

February 17, 2015, amended, reported — Do Pass.

February 19, 2015, read second time, ordered engrossed. Engrossed.

February 23, 2015, read third time, passed. Yeas 75, nays 20.

SENATE ACTION

February 25, 2015, read first time and referred to Committee on Local Government.

April 2, 2015, amended, reported favorably — Do Pass.

EH 1508—LS 7160/DI 55



April 3, 2015

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1508

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-7-4-709, AS AMENDED BY P.L.126-2011,
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 709. (a) Secondary approval under section 710 of
4 this chapter may be granted to a plat for a subdivision in which the
5 improvements and installments have not been completed as required
6 by the subdivision control ordinance, if:
7 (1) the applicant provides a bond, or other proof of financial
8 responsibility as prescribed by the legislative body in the
9 subdivision control ordinance, that:
10 (A) is an amount determined by the plan commission or plat
11 committee to be sufficient to complete the improvements and
12 installations in compliance with the ordinance; and
13 (B) provides surety satisfactory to the plan commission or plat
14 committee; or
15 (2) with respect to the installation or extension of water, sewer, or

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1 other utility service:

2 (A) the applicant shows by written evidence that it has entered
3 into a contract with the political subdivision or utility
4 providing the service; and

5 (B) the plan commission or plat committee determines based
6 on written evidence that the contract provides satisfactory
7 assurance that the service will be installed or extended in
8 compliance with the subdivision control ordinance.

9 (b) Any money received from a bond or otherwise shall be used only
10 for making the improvements and installments for which the bond or
11 other proof of financial responsibility was provided. This money may
12 be used for these purposes without appropriation. The improvement or
13 installation must conform to the standards provided for such
14 improvements or installations by the municipality in which it is located,
15 as well as the subdivision control ordinance.

16 (c) The plan commission shall, by rule, prescribe the procedure for
17 determining whether all improvements and installations have been
18 constructed and completed as required by the subdivision control
19 ordinance. The rule must designate the person or persons responsible
20 for making the determination.

21 **(d) As used in this section, "land developer" has the meaning set**
22 **forth in IC 6-1.1-4-12(a).**

23 **(e) As used in this section, "under development" means a**
24 **situation with respect to land in which a primary plat has been**
25 **filed and approved and work has commenced to make substantive**
26 **physical improvements to the land, excluding any work performed**
27 **for the purpose of preparing the land.**

28 **(f) Notwithstanding subsection (a), a local unit may not adopt or**
29 **enforce an ordinance, rule, or other policy requiring a land**
30 **developer of Class 1 or Class 2 structures to do any of the**
31 **following:**

32 **(1) Obtain a performance bond or other surety before the**
33 **date on which the land developer records an approved**
34 **secondary plat. However, a local unit may require the land**
35 **developer to obtain a performance bond or other surety**
36 **before an approved secondary plat is recorded if the area**
37 **under development is:**

38 **(A) within the existing public right-of-way; or**

39 **(B) related to erosion control.**

40 **(2) Obtain a maintenance bond that has an effective period**
41 **greater than three (3) years.**

42 **(g) After a secondary plat is approved, a local unit may require,**



as a condition precedent to recording the secondary plat, that the land developer obtain a performance bond or other surety for any incomplete or unfinished streets, sanitary piping, storm water piping systems, water mains, sidewalks and ornamental landscaping in common areas, and erosion control that:

(1) are:

(A) in the approved development; or

(B) required to service the approved development; and

(2) are included within:

(A) the legal description of the recorded plat; or

(B) a section in the legal description of the recorded plat; identified in the land developer's secondary plat filing.

(h) Any ordinance, rule, or policy requiring a land developer to obtain a performance bond or other surety under subsection (g) must include a provision for:

(1) the release of a performance bond or other surety upon completion to the satisfaction of the local unit of the subject matter upon which the performance bond or other surety was obtained; and

(2) the partial release of the performance bond or other surety on an annual basis in accordance with a partial release schedule agreed to in a signed writing by:

(A) the local unit, or the local unit's designated official or body; and

(B) the land developer or the land developer's designated agent;

before or during development.

(i) A performance bond or other surety requirement under subsection (f)(1) or subsection (g):

(1) must be based on a value provided for in an engineer's estimate or an actual contract amount, if available, to complete:

(A) the portion of the area or improvement of the project; or

(B) designated section in the project;

being bonded;

(2) may be based on an amount in excess of the full value of the engineer's estimate or actual contract amount, as appropriate, provided that any excess amount is based upon a reasonable adjustment for the estimated cost of inflation of materials and labor encompassed within the subject matter of the performance bond or other surety; and



1 **(3) may not include any land that is not under development at**
2 **the time the bond or other surety is required, such as sections**
3 **of adjacent or contiguous land that remain undeveloped,**
4 **except to the extent that the land not then under development**
5 **is used to access the site or provide utilities or other necessary**
6 **services to the land that is under development.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1508, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 32, delete "receives" and insert **"records an approved"**.

Page 2, line 33, delete "approval".

Page 2, line 34, after "before" insert **"a"**.

Page 2, line 35, delete "approval" and insert **"is recorded"**.

Page 2, delete lines 38 through 39.

Page 2, line 40, delete "(3)" and insert **"(2)"**.

Page 2, line 41, delete "ten percent (10%)" and insert **"twenty percent (20%)"**.

Page 2, line 41, after "the" insert **"engineer's estimate or"**.

Page 2, line 42, delete "cost" and insert **"contract amount, when available,"**.

Page 2, line 42, after "item;" insert **"or"**.

Page 3, delete lines 1 through 3.

Page 3, line 4, delete "(C)" and insert **"(B)"**.

Page 3, line 4, delete "the following:" and insert **"three (3) years."**

Page 3, delete lines 5 through 6.

Page 3, line 7, delete "Upon filing of a plat for secondary approval," and insert **"After a secondary plat is recorded,"**.

Page 3, line 12, after "mains," insert **"sidewalks, landscaping,"**.

Page 3, line 31, delete "." and insert **"if the person or entity to whom the duty is being delegated has acquired, or will acquire, a majority of the parcels or lots within the area under development."**

Page 3, line 34, after "subsection." insert **"A local unit may require a land developer to provide notice to the local unit if the land developer has delegated its duty to obtain a performance bond or maintenance bond as provided in this section."**

Page 3, line 36, delete "may not:" and insert **"**:

(1) must be based on a value provided for in an engineer's estimate or an actual contract amount, if available, to complete:".

Page 3, delete lines 37 through 41.

Page 4, line 3, delete **"or"**.

Page 4, between lines 3 and 4, begin a new line, block indented and insert:

"(2) may be based on an amount in excess of the full value of the engineer's estimate or actual contract amount, as



appropriate, provided that any excess amount is based upon a reasonable adjustment for the estimated cost of inflation or materials and labor encompassed within the subject matter of the performance bond or other surety; and".

Page 4, line 4, delete "(2)" and insert "**(3) may not**".

and when so amended that said bill do pass.

(Reference is to HB 1508 as introduced.)

MAHAN

Committee Vote: yeas 9, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1508, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 28, after "(f)" delete "A" and insert "**Notwithstanding subsection (a), a**".

Page 2, line 33, delete ", except that" and insert "**. However,**".

Page 2, line 34, after "bond" insert "**or other surety**".

Page 2, line 34, delete "a secondary" and insert "**an approved secondary**".

Page 2, line 38, delete ":".

Page 2, delete lines 39 through 41.

Page 2, line 42, delete "(B)".

Page 2, run in lines 38 through 42.

Page 3, line 1, delete "recorded," and insert "**approved,**".

Page 3, line 2, delete "before approval," and insert "**as a condition precedent to recording the secondary plat,**".

Page 3, line 2, delete "or the person delegated".

Page 3, line 3, delete "the land developer's duty, as provided in subsection (i),".

Page 3, line 6, delete "sidewalks, landscaping," and insert "**sidewalks and ornamental landscaping in common areas,**".

Page 3, delete lines 14 through 33, begin a new paragraph and insert:

"(h) Any ordinance, rule, or policy requiring a land developer to obtain a performance bond or other surety under subsection (g)



must include a provision for:

(1) the release of a performance bond or other surety upon completion to the satisfaction of the local unit of the subject matter upon which the performance bond or other surety was obtained; and

(2) the partial release of the performance bond or other surety on an annual basis in accordance with a partial release schedule agreed to in a signed writing by:

(A) the local unit, or the local unit's designated official or body; and

(B) the land developer or the land developer's designated agent;

before or during development."

Page 3, line 34, delete "(j)" and insert "**(i)**".

Page 4, line 4, delete "or" and insert "**of**".

and when so amended that said bill do pass.

(Reference is to HB 1508 as printed February 17, 2015.)

HEAD, Chairperson

Committee Vote: Yeas 7, Nays 1.

